Ahmad bin Ibrahim v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–174 OF 2009
APANDI ALI, AZAHAR MOHAMED AND LINTON ALBERT JJCA
16 AUGUST 2012

Criminal Law — Dangerous drugs — Trafficking — Trafficking in dangerous drugs — 854.2g cannabis found in possession — Dangerous Drugs Act 1952 ss 39(1)(a) & 39B(2)

Criminal Procedure — Appeal — Appeal against conviction and sentence — Failure of prosecution to call witness, whether fatal — Whether there was broken chain of evidence — Defence of innocent carrier — Admission of irrelevant and inadmissible evidence — Whether there was miscarriage of justice

The appellant, an Indonesian national, was convicted and sentenced to death after being found guilty of trafficking in 854.2g of cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') and punishable under s 39B(2) of the same Act. The appellant was arrested during an ambush as he was exiting through a staircase of the shop house where he lived. Although, he attempted to flee, the police managed to apprehend him. With him was a yellow-colored plastic bag which contained a slab of dried plant material wrapped in transparent plastic and tied with a string. The slab was later confirmed by a chemist report to be cannabis. A bunch of keys were found when the appellant was subjected to a body search and this led to several other arrests at the first floor of the shop house. In the High Court, the defence's story was that the appellant was an innocent carrier of the bag. He stated that one Iskandar gave him the bag before his arrest and he did not know that it contained cannabis. The High Court found that a prima facie case had been established against the appellant and the defence had failed to cast a reasonable doubt on the prosecution's case. The presumption of trafficking was also not rebutted on a balance of probabilities. Aggrieved, he then appealed to the Court of Appeal and the issues for determination were the failure of the prosecution to call Iskandar; whether the cannabis recovered from the appellant was the same cannabis sent and examined and produced in court as evidence; that the learned High Court judge had failed to appreciate the evidence that the appellant was an innocent carrier; and whether there was a miscarriage of justice to the appellant by reason of the admission of irrelevant and inadmissible evidence.

Held, dismissing appeal and affirming conviction and sentence of court below:

(1) The appellant's story was incapable of raising a reasonable doubt on the

prosecution's case. No reasonable doubt existed as to guilt of the appellant of the offence that he was charged with. The decision of the court below was neither perverse nor against the weight of evidence (see para 14).

(2) The failure to call Iskandar did not create a material gap in the prosecution's case. Although Iskandar was also charged under s 39B of the DDA, the 230g cannabis was seized from Iskandar when the police arrested him at the shop house. After arresting the appellant, he was brought up by the police to the shop house where Iskandar and two others were then arrested. The appellant had the opportunity to inform the policemen that it was Iskandar who had asked him to deliver the bag but the former chose not to do so. This entitled the High Court judge to disbelieve the appellant. The evidence of Iskandar was not necessary and not fatal to the prosecution's case as an adverse inference for not calling a witness cannot be drawn if there was sufficient other evidence to support the prosecutions case (see para 8).

(3) As testified in evidence, there was no doubt that the cannabis tendered in court was the one seized from the appellant. The evidence of PW1 had clearly established that the cannabis which PW6 handed for analysis was the very cannabis wrapped up after analysis and returned to PW6. There was no break in the chain of evidence regarding the exhibits (see para 9).

(4) The learned High Court judge was entitled and correct in rejecting the innocent carrier defence. The appellant's demeanor and conduct at the material time would show that he was aware of the cannabis in his possession. The demeanor, conduct and reaction of the appellant upon being confronted by the police were clearly admissible under s 8 of the Evidence Act 1950 on the issue whether the appellant having knowledge of the offending drug at the material time. He behaved suspiciously before being arrested and even tried to run away (see para 11).

(5) Applying the principles enshrined in the case of *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537, the admission of irrelevant and inadmissible evidence had not caused a substantial miscarriage of justice to the appellant. It was undisputed fact that the appellant was carrying the bag at the material time. Since he was in physical control of the bag, there was a strong inference that the appellant knew all along that the bag contained cannabis (see para 14).

[Bahasa Malaysia summary

Perayu, seorang warganegara Indonesia, telah disabitkan dan dijatuhi hukuman mati selepas didapati bersalah mengedar 854.2g ganja, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB') dan boleh dihukum di bawah s 39B(2) Akta yang sama. Perayu ditangkap semasa satu serbuan semasa dia keluar melalui anak tangga rumah kedai yang didudukinya. Walaupun dia cuba untuk melarikan diri, pihak polis dapat

menangkapnya. Satu beg plastik berwarna kuning yang mengandungi satu kepingan bahan tumbuhan kering yang dibungkus dalam plastik lutsinar dan diikat dengan tali ditemui bersamanya. Kepingan tersebut kemudiannya disahkan oleh laporan ahli kimia sebagai ganja. Beberapa kunci ditemui apabila perayu dibuat carian badan dan ini membawa kepada penangkapan beberapa orang lain di tingkat pertama rumah kedai. Di Mahkamah Tinggi, cerita pembelaan adalah perayu merupakan pembawa beg yang tidak bersalah. Dia menyatakan bahawa seorang lelaki bernama Iskandar memberikan beg tersebut kepadanya sebelum penangkapannya dan dia tidak tahu bahawa beg tersebut mengandungi ganja. Mahkamah Tinggi mendapati bahawa kes prima facie telah dibuktikan terhadap perayu dan pembelaan gagal untuk menimbulkan keraguan munasabah ke atas kes pendakwaan. Anggapan pengedaran juga tidak disangkal atas imbangan kebarangkalian. Tidak berpuas hati, perayu kemudiannya merayu ke Mahkamah Rayuan dan isu untuk ditentukan ialah kegagalan pendakwaraya untuk memanggil Iskandar; sama ada ganja yang ditemui daripada perayu sama dengan ganja yang dihantar dan diperiksa dan dikemukakan di mahkamah sebagai keterangan; bahawa hakim Mahkamah Tinggi gagal untuk menghargai keterangan bahawa perayu merupakan seorang pembawa yang tidak bersalah; dan sama ada terdapat salah laksana keadilan kepada perayu disebabkan penerimaan keterangan tidak relevan dan tidak boleh diterima.

Diputuskan, menolak rayuan dan membenarkan sabitan dan hukuman Mahkamah Tinggi:

(1) Cerita perayu tidak dapat menimbulkan keraguan munasabah ke atas kes pendakwaan. Tiada keraguan wujud terhadap kebersalahan perayu mengenai tuduhan yang dipertuduh ke atasnya. Keputusan mahkamah rendah adalah tidak melampau 'perverse' atau melanggar berat keterangan (lihat perenggan 14).

(2) Kegagalan untuk memanggil Iskandar tidak mewujudkan satu jurang penting dalam kes pendakwaan. Walaupun Iskandar juga dipertuduh di bawah s 39B ADB, 230g ganja telah dirampas daripada Iskandar apabila polis menangkapnya di rumah kedai. Selepas menangkap perayu, dia dibawa oleh pihak polis ke rumah kedai di mana Iskandar dan dua orang lainnya kemudiannya ditangkap. Perayu telah mendapat peluang untuk memaklumkan polis bahawa Iskandar yang memintanya menghantar beg tetapi perayu memilih untuk tidak berbuat demikian. Ini membuatkan hakim Mahkamah Tinggi tidak mempercayai perayu. Keterangan Iskandar adalah tidak penting dan tidak menjejaskan kes pendakwaan memandangkan satu anggapan bertentangan kerana tidak memanggil saksi tidak boleh dibuat sekiranya terdapat bukti mencukupi untuk menyokong kes pendakwaan (lihat perenggan 8).

(3) Seperti yang dinyatakan dalam keterangan, tiada keraguan bahawa ganja

yang ditunjukkan di mahkamah adalah yang dirampas daripada perayu. Keterangan SP1 secara jelas membuktikan bahawa ganja yang SP6 serahkan untuk analisa adalah ganja yang sama dibungkus selepas analisa dan dipulangkan kepada SP6. Rantaian keterangan tidak terputus berhubung dengan ekshibit-ekshibit (lihat perenggan 9).

(4) Hakim Mahkamah Tinggi berhak dan benar dalam menolak pembelaan pembawa tidak bersalah. Kelakuan dan tindakan perayu pada masa material boleh menunjukkan bahawa dia sedar mengenai ganja dalam milikannya. Kelakuan, tindakan dan reaksi perayu ketika berdepan dengan polis secara jelas diterima di bawah s 8 Akta Keterangan 1950 berdasarkan isu sama ada perayu mempunyai pengetahuan mengenai kesalahan dadah pada masa material. Dia berkelakuan mencurigakan sebelum ditangkap dan malah, cuba melarikan diri (lihat perenggan 11).

(5) Menggunakan prinsip-prinsip terpakai dalam kes *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537, penerimaan keterangan tidak relevan dan tidak boleh dipakai tidak menyebabkan salah laksana keadilan yang serius kepada perayu. Fakta yang tidak boleh dipertikaikan adalah bahawa perayu yang membawa beg tersebut pada masa material. Memandangkan dia mengawal secara fizikal beg tersebut, terdapat inferens yang kuat mengatakan bahawa perayu telah lama mengetahui bahawa beg tersebut mengandungi ganja (lihat perenggan 14).]

Notes

For a case on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 196.

For cases on trafficking, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 191–274.

Cases referred to

(1) Namasiyiam, (2) Rajindran, (3) Goh Chin Peng and (4) Ng Ah Kiat v PP [1987] 2 MLJ 336, SC (refd)

Gunalan a/l Ramachandran & Ors v PP [2004] 4 MLJ 489; [2004] 6 AMR 189, CA (refd)

Juraimi bin Husin v PP [1998] 1 MLJ 537, CA folld)

Parlan bin Dadeh v PP [2008] 6 MLJ 19, FC (refd)

PP v Abdul Rahman bin Akif [2007] 5 MLJ 1, FC (refd)

Seneviratne v R [1936] 3 All ER 36, PC (refd)

Su Ah Ping v PP [1980] 1 MLJ 75, FC (refd)

Teng Howe Sing v PP [2009] 3 MLJ 46, FC (refd)

Warner v Metropolitan Police Commissioner [1968] 2 All ER 356, HL (refd)

Wong Kok Keong v Regina [1955] MLJ 13, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 60, 60(1)
Dangerous Drugs Act 1952 ss 2, 5, 37(da)(vi), 39B, (1)(a), (2)
Evidence Act 1950 ss 8, 167

Appeal from: Criminal Trial No 45–106 of 2005 (High Court, Shah Alam)

S Selvi (Gooi &Azura) for the appellant.
Siti Rafidah bt Zainuddin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azahar Mohamed JCA (delivering judgment of the court):

[1] Ahmad bin Ibrahim ('the appellant'), an Indonesian national was charged with trafficking in 854.2g of cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act ('the Act') and punishable under s 39B(2) of the same Act. The charge reads:

> Bahawa kamu pada 9 Februari 2005 jam lebih kurang 8.00 malam di hadapan rumah kedai, Batu 71A Jalan Bukit Kemuning, di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya cannabis seberat 854.2 gram, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] On 31 July 2009 the High Court at Shah Alam found him guilty of the offence. He was convicted and sentenced to the mandatory death penalty prescribed by the Act. He then appealed to this court against that decision. We dismissed his appeal. We now give our reasons for so deciding.

[3] The essential facts as found by the learned High Court judge are these. At about 7.40pm on 9 February 2005, C/Inspector Ahmad Tarhizi bin Omar ('PW3') laid an ambush in front of a shop house at the 7 1/2 milestone Bukit Kemuning in the Klang District, Selangor together with ten other policemen. PW3 divided his men into groups. His group comprised himself and foure other policemen. They stationed themselves and conducted surveillance in front of the shop house. At about 8pm, PW3 observed a person (later identified as the appellant) coming down the staircase of the shop house. The appellant was alone. The appellant then stood on the five foot way. PW3 saw the appellant holding something in his right hand and was behaving in a suspicious manner. PW3 and his policemen then approached the appellant. He introduced himself as policeman. At that point of time, the appellant attempted to flee. PW3 and his men succeeded in apprehending the appellant who was still holding a bag in his right hand. PW3 seized the bag from the

appellant's right hand, which was a yellow coloured plastic bag bearing the printed words 'THE GRAND SALE'. PW3 opened the bag and saw a slab of dried plant material which he suspected to be cannabis. The slab was wrapped in transparent plastic and tied with a string. PW3 then conducted a body search on the appellant and found a bunch of keys in the appellant's right trouser pocket. Upon questioning, the appellant told PW3 that he lived on the first floor of the shop house. The appellant then led PW3 upstairs to the first floor of the shop house where PW3 made several arrests. The appellant and the bag containing the slab of dried plant material were then taken to the police station. Subsequently the dried plant material was sent to the Chemistry Department for analysis and the material was confirmed by the chemist, Puan Maimonah bt Sulaiman (PW1) to be cannabis as defined in s 2 of the Act, weighing 854.28g.

[4] At the end of the prosecution's case, on the basis of the primary evidence adduced by the prosecution which we have summarised above, the learned High Court judge made a finding that the appellant was in possession of the bag at the time of his arrest and that the appellant knew that it contained cannabis. Since the amount of the cannabis in the possession of the appellant was in excess of 200g, the learned High Court judge invoked the presumption under s 37(da)(vi) of the Act. The appellant was presumed to be trafficking in the cannabis unless he was able to prove to the contrary on the balance of probabilities. For that reason, the learned High Court judge held that a prima facie case had been made out against the appellant in respect of the offence charged. She then called upon the appellant to enter his defence.

[5] The appellant elected to evidence on oath. In essence, the appellant said that he was an innocent carrier of the bag containing the cannabis for one Iskandar to whom the cannabis actually belonged and that he had only momentary custody and control of the bag without knowledge that the bag contained cannabis. According to the appellant he had entered Malaysia about one week before he was arrested by the police and was staying with one Mohd Dahlan and others on the first floor of the shop house. It is his evidence that one of the persons who had stayed with him was one Iskandar. It was his defence that just before his arrest it was Iskandar who had given the bag containing the slab of cannabis to him with the express instruction to hand it over to Iskandar's friend who was waiting downstairs and that he had complied with Iskandar's instruction by taking the bag from Iskandar without knowing the nature of the contents of the bag. The appellant maintained that that he did not know what was in the package when he was arrested by the police.

[6] At the conclusion of the whole case, the learned High Court judge found that the appellant's defence had not raised a reasonable doubt on the prosecution's case, and neither had the appellant rebutted the presumption of trafficking on a balance of probabilities. As we have indicated earlier, the

appellant was accordingly convicted of the offence charged and sentenced accordingly by the learned High Court judge.

[7] When this appeal came before us, learned counsel for the appellant had raised four grounds. We shall deal with each of them in turn.

[8] The first relates to the failure by the prosecution to call Iskandar. Learned counsel submitted that the evidence of Iskandar is necessary to the unfolding of the prosecution's case bearing in mind that he was immediately arrested at the shop house after the arrest of the appellant and was subsequently charged for trafficking in cannabis. It was contended that the failure to call Iskandar had created a material gap in the prosecution's case. We do not agree. It is true that Iskandar was also charged under s 39B of the Act in respect of cannabis weighing 230g. However, an important point to emphasise here is that, as explained by the investigating officer, C/Inspector Mohamad Salim bin Gulam Muhammad (PW6), the 230g of cannabis was seized from Iskandar when the police arrested him at the shop house. In this regard, it is relevant to note that after arresting the appellant, PW3 went up to the first floor together with the appellant and arrested Iskandar and two others who were staying there at the time in question. At that point in time, the appellant had the opportunity to inform PW3 that it was Iskandar who had asked him to deliver the bag. But the appellant chose not to do so. In the circumstances of this case, the appellant's failure to provide relevant information about the involvement of Iskandar for the police to carry out a thorough investigation into the probability of his defence, entitled the High Court judge to disbelieve the appellant (see *Teng Howe Sing v Public Prosecutor* [2009] 3 MLJ 46). It is justifiable for the court to examine the contemporaneous act or omission and the prevailing circumstances under which the appellant said or failed to say. If indeed that it was Iskandar who had asked him to deliver the bag he would in all probability would inform this important fact to PW3 at the material time. Viewed in this way the evidence of Iskandar is not necessary to the unfolding of the prosecution's case (see *Seneviratne v R* [1936] 3 All ER 36). Furthermore, an adverse inference for not calling a witness cannot be drawn if there is sufficient other evidence to support the prosecution's case (see *(1) Namasiyiam, (2) Rajindran, (3) Goh Chin Peng and (4) Ng Ah Kiat v Public Prosecutor* [1987] 2 MLJ 336). In the circumstances, it was our judgment that the failure by the prosecution to call Iskandar is not fatal to its case as his evidence is not necessary to unfold the narrative upon which the prosecution case is based.

[9] We turn next to the second ground raised by learned counsel for the appellant. That is, the possibility of mix up between the slab of cannabis which PW3 had recovered from the appellant and the slab of cannabis which PW3 had recovered from Iskandar. We were unable to agree with this submission. The same arguments were in point of fact canvassed before the learned High

Court judge. She rejected the arguments and accepted the explanation by the prosecution's witnesses to the effect that there could not have been a mix up between the slab of cannabis which PW3 had recovered from the appellant and the slab of cannabis which PW3 had recovered from Iskandar. But more importantly, the question which arose for decision was whether the cannabis recovered by PW3 from the appellant was the same cannabis sent to and examined by PW1 and subsequently produced in court as evidence. In considering this issue, we had closely scrutinised the entire evidence contained in the appeal record. We have no doubt at all that the cannabis tendered in court which form the subject matter in respect of the offence charged against the appellant was the one actually seized from the appellant. PW3 confirmed and identified in court the relevant exhibits and cannabis which were seized from the appellant's possession. PW3 handed over all the same exhibits to PW6 on the same day. The evidence of the PW1 had clearly established that the cannabis which PW6 handed to her for analysis was the very cannabis he wrapped up after analysis, and then returned it to PW6. PW1 also identified in court the exhibits and the cannabis in question. Clearly, there was no break in the chain of evidence regarding the exhibits in the present case (see *Gunalan a/l Ramachandran & Ors v Public Prosecutor* [2004] 4 MLJ 489; [2004] 6 AMR 189 and *Su Ah Ping v Public Prosecutor* [1980] 1 MLJ 75).

[10] Turning now to the third ground, it was argued by learned counsel that the learned High Court judge had failed to appreciate the evidence given by the appellant that he was an innocent carrier of the bag containing the cannabis for Iskandar and that the appellant had only momentary custody and control of the bag without knowledge that the bag contained cannabis. According to the appellant, there was a lack of judicial appreciation of the defence of the appellant. A defence of innocent carrier refers to a state of affairs where an accused person acknowledges carrying, for example a bag, as in the case before us, containing the dangerous drugs but disputes having knowledge of the drugs. Whether it will succeed or not would very much depend on the facts of each case. In considering this ground, we had scrutinised with care the judgment of the learned High Court judge. The learned High Court judge had expressly referred to the defence and had carefully considered it. This is what the learned judge said in his judgment:

> The proven facts showed that the accused had descended the staircase of the first floor and was standing on the five foot way with the bag in his right hand. Even assuming for a moment that it was true that Iskandar had given him the bag, he had willingly taken custody of the bag and he was in control of the bag at the material time. He also had ample opportunity to look into the bag before he made or continued his descent down the staircase. He chose not to do that. From his suspicious and guilty conduct and his failure to rebut the inference that was made by the court of his guilty knowledge of the cannabis inside the bag the court was satisfied beyond a reasonable doubt that he had mens rea possession of the cannabis.

[11] As noted by the learned High Court judge in her judgment (see p 115 *jilid* 2 of the appeal record) the physical condition of the bag the appellant was holding in his right hand showed that it could be easily opened in order to discover its contents and that the cannabis, which is the subject matter in respect of the offence charged was wrapped in transparent plastic. The appellant could have easily opened the bag to check its contents. A person who on purpose shut his eyes to the obvious for the reason that he did not want to know would be taken to have the necessary knowledge. The learned High Court judge had judicially appreciated and considered the defence of innocent carrier. On consideration of the evidence in the appeal record of the present case, in our judgment, the learned High Court judge was entitled and correct in rejecting the innocent carrier defence. Moreover, in our judgment, the appellant's demeanour and conduct at the material time would show that he was aware of the cannabis in his possession. The demeanour and the conduct as well as the reaction of the appellant upon being confronted by the police were clearly admissible under s 8 of the Evidence Act 1950 on the issue whether the appellant having knowledge of the offending drug at the material time (see *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19). Evidently, the appellant was behaving suspiciously before he was arrested and tried to run away when PW3 identified himself to the accused as a police officer. In this connection, the learned High Court judge had considered and rejected the explanation of the appellant that he had struggled with PW3 because he was afraid as he did not possess a valid passport and that he had just entered the country a week before he was arrested. Since this issue involved the credibility of the appellant, the learned High Court judge was as a matter of fact a better person either to accept or reject his explanation. It is not the function of this court to substitute its findings for that of the learned High Court judge. In any event, we found no plausible reason at all to disturb her findings.

[12] This brings us to the fourth and the last ground. Learned counsel had argued that the appellant was not charged in respect of self administration of drugs to himself under s 5 of the Act. It was argued that the learned high judge admitted irrelevant and inadmissible evidence which is highly prejudicial to the appellant. The learned High Court judge admitted evidence from Puan Noriha bt Sanusi (PW5), the science officer that the appellant's urine test was tested positive for 11 - nor delta - 9 - tetrahydrocannabinol - 9 -carboxylic acid, a type of molecule which is always present in the urine a person who has taken *ganja*. Learned counsel further argued that the learned High Court judge relied on the said prejudicial evidence and convicted the appellant. It is true that in her judgment, the learned High Court judge made reference to the evidence concerning the presence of a type of cannabis molecule in the appellant's urine. Nevertheless, in her judgment she also concluded that if this evidence is completely disregarded, she found that 'the accused had failed to rebut the other independent evidence from which the court had inferred knowledge on his part concerning the cannabis inside the bag. The accused could have easily

opened the bag to check its contents. Had he done that he could have easily seen that it was a slab of cannabis as it was wrapped in transparent plastic'. This brings into focus the question whether there was occasioned any substantial miscarriage of justice to the appellant by reason of the admission of irrelevant and inadmissible evidence. In this regard, the proviso to s 60(1) of the Courts of Judicature Act 1964 makes clear the powers of Court of Appeal as follows:

> Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

[13] Even more to the point is s 167 of the Evidence Act which works in tandem with the proviso to s 60. It provides:

> The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the court before which the objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

[14] The test to determine whether or not the judgment of a court should be reversed or altered on account of the wrongful admission of evidence is whether or not without that evidence there was sufficient evidence to justify the decision (see *Wong Kok Keong v Regina* [1955] 1 MLJ 13). The case of *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537 established the principle that if in a criminal appeal an appellant has demonstrated errors in point of evidence or procedure it is the duty of this court to determine whether, despite the error or errors in question, there exists a reasonable doubt in its mind as to the guilt of the accused, based upon the admissible evidence on the record. If the error or errors complained of do not have this effect, then it is the duty of this court to plainly say so and maintain the conviction. Applying the same foregoing principles as laid down by the case of *Juraimi bin Husin v Public Prosecutor*, we took the view that the admission of irrelevant and inadmissible evidence in the case at hand has not occasioned a substantial miscarriage of justice to the appellant. Apart from the fact that the learned High Court judge had critically appraised the issue whether the appellant had the prerequisite knowledge about the cannabis found inside the beg, we had ourselves carefully scrutinised the whole of the evidence in the appeal record in the light of the criticisms addressed by learned counsel for the appellant. In the present case, it is not in dispute that the appellant was carrying the bag at the material time. Since the appellant was in physical control of the bag there is a strong inference that the appellant knew all along that the bag found on his possession contained the offending cannabis. What is more, the bag could be easily opened in order to discover its contents. Therefore, it calls for an explanation by the appellant in order to rebut the said strong inference (see *Warner v Metropolitan Police*

Commissioner [1968] 2 All ER 356 at p 394 and *Public Prosecutor v Abdul Rahman bin Akif* [2007] 5 MLJ 1). In our judgment, the appellant's demeanour and conduct when confronted by PW3 at the time in question were reactions driven by guilt. The totality of the evidence, the surrounding circumstances and the conduct of the appellant when taken together irresistibly point to the appellant having knowledge of the cannabis in the bag at the material time. In our judgment, the appellant's story was incapable of raising a reasonable doubt on the prosecution's case. The existence or otherwise of reasonable doubt, in the final analysis would have to depend upon the facts of each case, regard being had to the common course of natural events and human conduct and experience. Although the benefit of every reasonable doubt must be given to the appellant and cannot be withheld from him, this court must not entertain it on grounds which are fanciful or in the nature of speculation. A reasonable doubt is not a doubt based upon sympathy or prejudice. Reasonable doubt is a doubt arising from the evidence adduced or doubt which arise for reasons of lack of evidence. The existence of reasonable doubt is dependent upon the totality of the evidence and on an examination of all the evidence in a fair and reasonable manner and not in isolation. It is not required that the prosecution proves guilt beyond all possible doubt. The test is one of reasonable doubt. After taking into consideration all the complaints advanced on behalf of the appellant, it is our judgment that no reasonable doubt exists as to guilt of the appellant of the offence with which he was charged. The decision of the learned High Court judge was neither perverse nor against the weight of evidence. We were wholly convinced that at the material time and place, the appellant knew that he was carrying cannabis and that he was not an innocent carrier.

[15] We had, therefore, dismissed the appeal. We affirmed the conviction and the sentence of death imposed by the learned High Court judge upon the appellant.

Appeal dismissed and conviction and sentence of court below affirmed.

Reported by Ibnu Aswan